



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION VIII  
999 12th STREET - SUITE 500  
DENVER, COLORADO 80202-2466

MAY - 6 1992

Ref: EHW-FF

Mr. James K. Hartman  
Acting Assistant Manager for Environmental Management  
Department of Energy  
Rocky Flats Office  
P.O. Box 928  
Golden, CO 80402-0928

Dear Mr. Hartman:

I have reviewed the request, expressed in your letter to me (April 28, 1992), that the "Thirds" mixed waste generated and stored at the Rocky Flats Plant (RFP) be considered as covered wastes under Chapter IV, Paragraph 10 of the Federal Facilities Compliance Agreement signed May 10, 1991 (FFCA II).

The legal aspects of the Rocky Flats Plant (RFP) land disposal restricted mixed waste situation have been reviewed by my staff. We have concluded that the 1-year storage prohibition is not effective until May 8, 1992, when the national capacity variance ends. Newly generated "Thirds" mixed waste will be prohibited from storage under the provisions of 40 CFR Section 268.50 on May 8, 1992. This means that prohibited waste generated after this date must either meet the Land Disposal Restrictions (LDR) treatment standard within 90 days of the time it is generated, or the waste can be stored on site if the storage provision requirements of 40 CFR Section 268.50 are met. The storage provisions require, in part, that the waste be stored only for the purpose of accumulating a quantity necessary to facilitate proper recovery, treatment, or disposal of the waste. Since DOE does not have developed treatment options or recovery/disposal plans for all of its waste, the Agency cannot conclude that the waste is being stored for the purpose of facilitating its recovery, treatment or disposal. DOE/EG&G will therefore be in violation of 268.50 after May 8, 1992, if newly generated "Thirds" waste is stored for longer than 90 days.

In response to your request to include the "Thirds" mixed waste in the FFCA II, we note that the Colorado Department of Health (CDH) has agreed with your request to restart negotiations on an agreement with DOE and that CDH will likely gain regulatory authority for the "Thirds" waste within three to four months. It is EPA's position that when CDH is delegated authority for implementing the Hazardous and Solid Waste Amendments (HSWA), EPA's role must become one of oversight. For this reason EPA will agree to include the "Thirds" mixed waste in the FFCA II for

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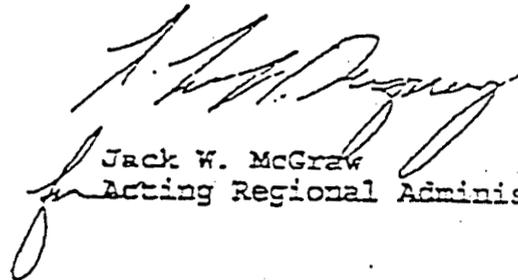
ADMIN RECORD

A-SW-001253

the time period that CDE is not authorized for that portion of HSWA. When CDE becomes authorized to implement the "Thirds" LDR regulations, the amendment to FPCA II which brings RFP's "Thirds" waste into the agreement would terminate.

Enclosed please find for your review and signature, an amendment to FPCA II. If you are agreeable to the language and content of the amendment please sign and return it to me. If you have questions regarding this letter or the enclosed amendment, please contact David Maxwell or Martin Hestmark of my staff at (303) 294-1062 and (303) 294-1134, respectively. If you have questions that are of a legal nature please contact Chuck Figur, Office of Regional Counsel at (303) 294-7554.

Sincerely,

  
Jack W. McGraw  
Acting Regional Administrator

Enclosure

Federal Facility Compliance Agreement  
Docket No. RCRA (3008) VIII-91-09  
AMENDMENT NO. 1, May 8, 1992

IV. COVERED MATTERS

10. Except as specifically set forth elsewhere in this Agreement, this Agreement shall only apply to the LDR requirements pertaining to past and on-going generation, accumulation, storage, and treatment of:

- (1) the hazardous waste portion of radioactive mixed waste;
- (2) the hazardous waste portion of mixed residues;
- (3) certain non-radioactive hazardous wastes as described in paragraph 18 (Non-radioactive Hazardous Waste Shipping Schedule); and
- (4) the hazardous waste portion of radioactive mixed wastes or mixed residues containing wastes classified as "Thirds" within the LDR regulations (55 Fed. Reg. 22520, June 1, 1990), and which are placed into storage after May 8, 1992 (If an extension is granted by EPA altering the May 8, 1992, effective date, "Thirds" wastes placed into storage after the expiration of the extension granted by EPA will be covered by this Agreement); at the RFP which are subject to the LDR prohibitions and which do not meet the LDR treatment standards. The wastes described in this paragraph, including mixed residues, are referred to herein as "covered" wastes.

XVII. COVENANT NOT TO SEEK CIVIL ENFORCEMENT ACTION AND RESERVATION OF RIGHTS

69. In recognition that DOE is currently storing and will continue to generate and store radioactive mixed wastes referred to as "covered wastes" in Chapter IV., Paragraph 10. of this Agreement at those units known to EPA as of the effective date of this Agreement, and, for those units subsequently approved by EPA as covered units as provided for in Paragraph 16.A of this Agreement;

And that, DOE has agreed to address the continued storage of covered wastes at covered units subject to Section 3004(j) of RCRA as set forth in this Agreement;

And that, the Parties intend that DOE will request and obtain all funding necessary for DOE to address all violations or conditions at the facility as set forth in this Agreement;

And, based on the facts and circumstances known to EPA as of the effective date of this Agreement, and set forth in this Agreement, EPA hereby agrees not to initiate any further civil administrative enforcement action, or to refer a civil judicial

enforcement action to the Department of Justice, for violation of RCRA Section 3004(j) arising from storage of covered waste at covered units for so long as DOE is in compliance with the requirements of this Agreement;

XXIII. DURATION OF AGREEMENT

84. The terms of this Agreement which apply to the "Thirds" portions of the covered wastes as defined within Chapter IV., Paragraph 10. of this Agreement shall terminate immediately upon State of Colorado authorization for implementation of the "Thirds" rules as defined within Chapter V, Paragraph 12.M. of this Agreement. In all other events, this Agreement will expire two (2) years from the execution of the Agreement.

THE PARTIES SO AGREE:

  
\_\_\_\_\_  
Jack W. McGraw  
Acting Regional Administrator  
U.S. EPA Region VIII

5/6/92  
Date

  
\_\_\_\_\_  
Terry Naeth  
Manager  
U.S. Department of Energy  
Rocky Flats Office

5/7/92  
Date